



OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 316

RIN 3206-AN92

Temporary and Term Employment

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing rules that would allow agencies to make term appointments in Science, Technology, Engineering, Mathematics (STEM) occupations; positions needed to stand-up, operate, and close-out time-limited organizations which have a specific statutory appropriation; and time-limited projects which have been funded through specific appropriation; for up to 10 years. OPM is proposing this rule to provide agencies with greater flexibility to staff foreseeably long-term projects of a STEM nature when the need for the work is not permanent, and other time-limited work when authorized by specific funding by Congress. The intended effect of this change is to allow agencies the flexibility and discretion to hire individuals with knowledge, skills and abilities tailored to a specific project or Congressional funded work that may not be required on a permanent basis or transferable to other functions of the agency. This longer term appointment may also assist agencies in recruiting individuals with specialized STEM knowledge who prefer the opportunity to work on a project-by-project basis to build their resumes and maintain current skills.

DATES: OPM must receive comments on or before November 10, 2020.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by any of the following methods:

•Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Michelle Glynn at (202) 606-1571, by fax at (202) 606-3340, TDD at (202) 418-3134, or by e-mail at Michelle.Glynn@opm.gov.

SUPPLEMENTARY INFORMATION: OPM is proposing to amend its rules pertaining to term employment to allow agencies to make term appointments in certain STEM occupations; positions needed to stand-up, operate, and close-out time-limited organizations which have a specific statutory appropriation; and time-limited projects which have been funded through specific appropriation; for up to 10 years. To do this, OPM is amending its regulations at 5 CFR part 316, subpart C, by adding a new paragraph to § 316.301 which authorizes agencies to hire individuals into STEM occupations and positions needed in support of other time-limited work when authorized by specific funding by Congress, for up to 10 years.

Under current regulations at 5 CFR part 316, subpart C, agencies have the discretion to make term appointments for a period of more than 1 year but not more than 4 years to any positions for which the need for an employee's services is not permanent. If an agency wishes to extend the term beyond four years or make an initial appointment of more than 4 years, it must obtain OPM's approval. 5 CFR 316.301. OPM recognizes, however, that the work performed by STEM positions, and positions needed in support of projects and organizations specifically funded by Congress, often lasts longer than 4 years. For example, it may be cyclical and often

project based (e.g., developing a research concept, initial research to prove feasibility, and testing/evaluation) and must continue until the goal or purpose of the work has been accomplished. Such work may include, but is not limited to, the need to collect data or conduct research (including medical research) regarding a certain trend or phenomenon, sometimes over time; perform STEM analysis of this data or research; and prepare reports of findings and recommendations, based on the data and analysis; or develop and implement new Information Technology (IT) projects or programs. In some instances, the work performed by these individuals may be affected by environmental factors or other external circumstances beyond the agency's control, which may result in the need for a lengthier appointment.

In addition, a study using Burning Glass¹ data suggests that the pace of technological change is driving a STEM skills gap, with new technological advancements continually demanding new skills of STEM workers and making some existing skills obsolete. (Deming, David J.; Noray, Kadeem L, STEM Careers and the Changing Skill Requirements of Work. The National Bureau of Economic Research, Revised June 2019.) The authors state, "Using a near-universe of online job vacancy data collected between 2007 and 2017 by the employment analytics firm Burning Glass Technologies (BG), we show that job skill requirements change significantly over the course of a decade. We use the BG data to calculate a systematic measure of job skill change, and show that skill demands in STEM occupations have changed especially quickly. The faster rate of change in STEM is driven both by more rapid obsolescence of old skills and by faster adoption of new skills." Moreover, there is a 13 percent projected growth of STEM jobs in the United States between 2017 and 2027. (Feiman, Joseph, Can STEM Qualifications Hold The Key To The Future Of Cybersecurity? (Forbes September 11, 2019),

¹ Employment analytics firm Burning Glass Technologies (BGT).

citing Economy Modeling Specialists International 2017, ecs.org/vital-signs-notes-and-sources/. Given this high demand, agencies will need the flexibility and agility to attract and retain talent, for a significant period of time, with up-to-date knowledge and training in the STEM fields for time-limited projects. This regulation will allow agencies to hire new STEM personnel and grant their own extension of the term appointments, if initially hired for less than 10 years, to allow agencies the ability to shape their workforce with greater agility to meet current and emerging mission needs. Affording agencies the option to use longer term appointments in lieu of contracting will allow the agency to have STEM hires to be placed in managerial or supervisory positions throughout the life cycle of a time-limited project. In addition, this regulation may help agencies better compete for STEM talent because Federal term employment will offer individuals more job security and benefits (e.g., health insurance, life insurance and participation in the Thrift Savings Plan (TSP) than would contract work to individuals interested in working on special projects in order to keep abreast of new technology and enhance their skills.

OPM is proposing use of this authority for any STEM occupation, regardless of occupational group. This includes a variety of professional and technical positions in numerous occupational groups (e.g., Natural Resources Management and Biological Sciences; medical, hospital, dental, and public health, and information technology).

In addition, OPM is proposing to extend this flexibility to cover positions needed in support of time-limited organizations or projects which have been specifically funded by Congress (i.e., the organization or project has been funded outside of, or in addition to, an agency's usual appropriation). Work of this nature oftentimes requires positions to be filled initially for an unknown period of time. This uncertainty may result in recruitment and retention

challenges when agencies are endeavoring to implement and support expressed Congressional interest these organizations or projects.

Under current OPM regulation, the duration of a term appointment is limited to four years and agencies may not extend a term appointment beyond four years without OPM approval. OPM is proposing that an agency may appoint individuals in STEM positions, positions needed in support of projects and organizations specifically funded by Congress, for a term of more than 1 year up to a term of 10 years, and, if the initial appointment is less than 10 years, an agency may extend the appointment up to the 10-year limit in increments determined by the agency. The vacancy announcement used to fill these position must state that the agency has the option of extending the term appointment up to the 10-year limit. No appointment made under this section may last longer than 10 years from the date of the initial appointment. When using this authority, an agency must follow the procedures and requirements of 5 CFR part 316, subpart C, for purposes of selection, tenure, and trial periods.

OPM's current regulations provide that OPM may approve the extension of 4-year appointment if the extension is "clearly justified" and is consistent with applicable statutory provisions. 5 CFR 316.301(b). OPM believes that agencies that perform time-limited projects that require the specialized STEM skills, or which are in support of organizations or projects specifically funded by Congress, are in the best position to assess how long the project should continue, and should have the ability to act quickly when, in the agency's judgment, additional time is necessary. OPM believes this flexibility promotes retention and continuity, workforce planning, and minimizes disruptions during project work because term employees may be less likely to leave if they know their employment for the anticipated life of the project is secure rather than face an uncertain future awaiting a process under which their agency requests and

must receive OPM extension approval for continuing work on the same project. Accordingly, OPM is not requiring agencies to obtain OPM approval to take advantage of the full 10-year term appointment under the proposed rule. However, agencies will be subject to OPM oversight regarding whether they are using this appointment appropriately. OPM does not intend this rule to be a substitute for a permanent workforce or for appointing employees to permanent positions for work of a permanent nature. OPM intends this rule to be used only for STEM work that is genuinely time-limited in nature; or for positions needed to stand-up, operate, and close-out time-limited organizations which have a specific statutory appropriation; and time-limited projects which have been funded through specific appropriation.

Lastly, OPM is proposing to modify §316.302(b)(7) to allow an agency to reappoint an individual who previously served on a 10-year term appointment to a position in the same agency appropriate for filling up to the 10-year maximum limit. Combined service under the previous term appointment(s) cannot exceed 10 years. We are also proposing to modify this section to include reappointments made pursuant to §316.301(b), so as attune reappointments to such positions with those for 4-year term appointments made pursuant to §316.301(a), and those made under proposed §316.301(c). This proposed modification parallels current regulatory language for individuals serving on 4-year term appointments made under §316.301(a).

OPM invites comments on all aspects of the proposed regulation. OPM is particularly interested in testing its conclusions regarding the anticipated benefits of this regulation, additional examples of relevant agency experience, information regarding any potential benefits of this rule or possible drawbacks, and suggestions for possible improvements.

Regulatory Flexibility Act

We certify that this regulation will not have a significant impact on a substantial number of small entities because it applies only to Federal agencies and employees.

E.O. 13563 and E.O. 12866, Regulatory Review

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action,” under Executive Order 12866.

Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

The Executive Order 13771 designation for any final rule resulting from these proposed regulations will be informed by comments received. The preliminary Executive Order 13771 designation for this proposed rule is deregulatory.

This regulation provides substantial flexibility to agencies, and therefore generates cost savings for these agencies. As a result, we consider this rule to be a deregulatory action under Executive Order 13771.

E.O. 13132, Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

E.O. 12988, Civil Justice Reform

This regulation meets the applicable standard set forth in section 3(a) and (b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, or tribal governments of more than \$100 million annually. Thus, no written assessment of unfunded mandates is required.

Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 316

Employment, Government employees.

Office of Personnel Management.

Alexys Stanley,
Regulatory Affairs Analyst.

Accordingly, we propose to amend 5 CFR part 316 as follows:

PART 316 - TEMPORARY AND TERM EMPLOYMENT

1. Revise the authority citation for part 316 to read as follows:

AUTHORITY: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218; 5 CFR 2.2(c).

Subpart C-Term Employment

2. Amend §316.301 by adding paragraph (c) to read as follows:

§ 316.301 Purpose and duration.

* * * * *

(c) An agency may make a term appointment for a period of more than 1 year but not more than 10 years to any science, technology, engineering, mathematics (STEM) position when the need for an employee's services is not permanent; or for positions needed to stand-up, operate, and close-out time-limited organizations which have a specific statutory appropriation; or time-limited projects which have been funded through specific congressional appropriation. An agency may extend an appointment made for more than 1 year but fewer than 10 years up to the 10-year limit in increments determined by the agency. The vacancy announcement must state that the agency has the option of extending a term appointment under this section up to the 10-year limit. No appointment made under this section may last longer than 10 years from the date of the initial appointment.

3. Amend §316.302 by revising paragraph (b)(7) to read as follows:

§316.302 Selection of term employees.

* * * * *

(b) * * *

(7) Reappointment on the basis of having left a term appointment prior to serving the 4-year maximum amount of time allowed under the appointment per §316.301(a), the maximum time allowed for an appointment authorized under this paragraph (b), or the 10-year maximum amount of time allowed under §316.301(c). Reappointment must be to a position in the same agency for filling under the original term appointment and for which the individual qualifies. Combined service under the original term appointment and reappointment must not exceed the 4-year limit for positions pursuant to §316.301(a), the maximum time allowed for an appointment authorized under §316.301(b), or the 10-year limit under §316.301(c), as appropriate; or

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